



RTC
Agenda Item No. 1E1

MEMORANDUM

TO: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

DATE: December 12, 2011

FROM: R. A. Cuevas, Jr.
County Attorney

SUBJECT: Ordinance creating Section 2-17
of the Code; to waive competitive
procurement of goods and services
at Miami International Airport to
avoid disruptions to passengers
or airline operations

The accompanying ordinance was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Bruno A. Barreiro.

R. A. Cuevas, Jr.
County Attorney

RAC/up

Memorandum



Date:

To: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor

A handwritten signature in black ink, appearing to read "Gimenez", written over a horizontal line.

Subject: Ordinance waiving competitive procurement of goods and services at Miami International Airport (MIA)

The ordinance waives the competitive procurement of goods and services at MIA, granting the Mayor or his designee the authority to advertise, award, amend, negotiate, extend contract duration, and settle claims without need for prior approval from the Board of County Commissioners (BCC) for contracts for goods and services, and construction and professional services that do not exceed \$5 million for the life of the contract when necessary to avoid disruption to passengers or airline operations. In addition, the County Mayor or his designee must provide information regarding projected capital projects on an annual basis that details the five year project cost. Once they are approved and adopted by the BCC, MIA will have the ability to draft, issue, or advertise invitations to bid, requests for proposals, or any other procurement activity seeking planning, engineering, and construction of the approved capital project without additional approval from the BCC. All actions are subject to ratification by the BCC and revocable if not ratified. The proposed ordinance will not have a fiscal impact to the County.

A handwritten signature in black ink, appearing to read "Gimenez", written over a horizontal line.

Office of the Mayor

Fis1812




MEMORANDUM

(Revised)

TO: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

DATE: November 3, 2011

FROM: 
R. A. Cuevas, Jr.
County Attorney

SUBJECT: Agenda Item No. 4(A)

Please note any items checked.

- ☐ "3-Day Rule" for committees applicable if raised
- ☐ 6 weeks required between first reading and public hearing
- ☐ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☐ Statement of fiscal impact required
- ☐ Ordinance creating a new board requires detailed County Manager's report for public hearing
- ☐ No committee review
- ☐ Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous ____) to approve
- ☐ Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 4(A)
11-3-11

ORDINANCE NO. _____

ORDINANCE CREATING SECTION 2-286.2 OF THE CODE OF MIAMI-DADE COUNTY; FINDING THAT IT IS IN THE BEST INTEREST OF MIAMI-DADE COUNTY TO WAIVE COMPETITIVE PROCUREMENT OF GOODS AND SERVICES AT MIAMI INTERNATIONAL AIRPORT WERE NECESSARY TO AVOID DISRUPTIONS TO PASSENGERS OR AIRLINE OPERATIONS; DELEGATING TO THE COUNTY MAYOR OR MAYOR'S DESIGNEE THE AUTHORITY TO ADVERTISE, AWARD, AMEND, AND NEGOTIATE CONTRACTS FOR GOODS AND SERVICES AT MIAMI INTERNATIONAL AIRPORT, TO EXTEND CONTRACT DURATION, AND TO SETTLE CLAIMS, WITHOUT NEED FOR PRIOR BOARD APPROVAL; DELEGATING TO THE COUNTY MAYOR OR MAYOR'S DESIGNEE THE AUTHORITY TO ADVERTISE, AWARD, AMEND, AND NEGOTIATE CONTRACTS FOR CONSTRUCTION AND PROFESSIONAL SERVICES AT MIAMI INTERNATIONAL AIRPORT, TO EXTEND CONTRACT DURATION, TO EXECUTE CHANGE ORDERS, AND TO SETTLE CLAIMS, WITHOUT NEED FOR PRIOR BOARD APPROVAL; REQUIRING THE COUNTY MAYOR TO SPECIFY PROJECTED CAPITAL PROJECTS IN THE YEARLY BUDGET; SPECIFYING MAXIMUM DOLLAR LIMITS ON ANY CHANGE ORDERS EXECUTED WITHOUT PRIOR APPROVAL OF THE BOARD OF COUNTY COMMISSIONERS; PROVIDING FOR RATIFICATION OF ALL ACTIONS; PROVIDING FOR THE COUNTY MAYOR OR MAYOR'S DESIGNEE TO EXECUTE CHANGE ORDERS RELATED TO CONTRACTS CURRENTLY AWARDED RELATED TO THE REMAINING CONSTRUCTION AND DESIGN OF NORTH TERMINAL; ALLOWING THE COUNTY MAYOR OR MAYOR'S DESIGNEE TO AWARD LEASES WITH THE FEDERAL GOVERNMENT OF UP TO TEN YEARS IN TERM WITHOUT PRIOR APPROVAL OF THE BOARD OF COUNTY COMMISSIONERS; PROVIDING FOR SEVERABILITY, PRIORITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

WHEREAS, Miami International Airport (MIA) is a primary means by which tourists, residents, and cargo enter and depart Miami-Dade County; and

WHEREAS, tourism and international trade are key elements of the economy of Miami-Dade County; and

WHEREAS, MIA faces competition from airports in Florida, in Atlanta, and in Texas for passengers, and from airports throughout the world for international cargo; and

WHEREAS, to ensure that MIA can compete with these airports, and can otherwise remain a leading national airport, and a cornerstone of the County economy, it is necessary to ensure that MIA can quickly and effectively respond to customer and airline needs, or to market opportunities; and

WHEREAS, an inability to quickly and effectively respond to such needs could result in economic harm to the County, including the loss of trade, tourists, and jobs,

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA:

Section 1. Section 2-286.2 of the Code of Miami-Dade County is created to read as follows:¹

>>Sec 2-286.2. Miami International Airport Enterprise Ordinance.

(1) This Section of the Miami-Dade County Code shall be referred to as the Miami International Airport Enterprise Ordinance. This Ordinance shall be broadly construed, in light of the unique importance of Miami International Airport to the economic well-being of Miami-Dade County and the County's desire that Miami International Airport be able to quickly respond to market opportunities and passenger or airline needs. Specifically, and in light of the unique importance of Miami-International Airport to the economic well-being of the County, inclusive of its role in tourism, cargo, and job creation, the Board finds that it is in the best interests of Miami-Dade County to permit the County

¹ Words stricken through and/or [[double bracketed]] shall be deleted. Words underscored and/or >>double arrowed<< constitute the amendment proposed. Remaining provisions are now in effect and remain unchanged.

Mayor or designee to award contracts for goods and services via bid waiver where necessary to avoid disruption to passengers or airport operations.

(2) The powers conferred in this Ordinance shall be supplemental to, and not in derogation of, any other powers or authority granted elsewhere in any ordinance, statute, or resolution.

(3) With respect to any contract at Miami International Airport, but excluding contracts for capital or other construction, the County Mayor or designee is authorized to:

(a) Draft, Issue, or Advertise Invitations to Bid, Requests for Proposals, Requests for Qualifications, or any other document seeking competitive procurement of goods, services, or concessions.

(b) Waive competitive procurement of goods and services, upon recommendation of the County Mayor, where such waiver is necessary to avert a disruption to passengers or to airport operations. However, contemporaneously with such extension or adjustment, the County Mayor or designee shall file with the Clerk of the Board a memoranda specifying the disruption being avoided by such Bid Waiver, and explaining why a competitive procurement could not accomplish the same avoidance.

(c) May reject all bids, proposals, or other documents received in connection with any competitive or negotiated procurement.

(d) May award any contract for goods, services, inclusive of bid waivers, if the value of such contract, inclusive of option years and allowance accounts, is less than \$5,000,000.00. In the event that any award of any such contract is protested, the Board of County Commissioners shall award such contract. This Section does not authorize the County Mayor or designee to award concession contracts.

(e) Where necessary to avoid disruption to passengers or to airport operations, extend any contract for goods, services, or concession on a month to month basis, or to adjust the payments made by any concession to the County; however, contemporaneously with such extension or adjustment, the County Mayor or designee shall file with the Clerk of the Board a memoranda specifying the disruption being avoided by such extension or adjustment, and the anticipated date that a replacement contract will be awarded.

(f) Negotiate and settle, via change order or settlement agreement, any claims made by any contractor for goods, services, or concessions, so long as the aggregate value of the settlement does not exceed \$5,000,000.00.

- (g) Execute change orders modifying the terms and conditions of any contract for goods, services, or concessions, if the value of such modification is less than \$5,000,000.00 over the life of the contract. All such change orders shall include a line quantifying the value of the changed contract language.
- (h) Set an ACDBE goal on contracts for airport concessions.
- (i) Issue non-exclusive permits, of up to two years in duration, allowing third party economic activity at any airport, if such permits are revocable at the will of the County, impose no financial obligation on the County, and provide for payments to the County of a stipulated percentage of gross sales by the permittee to the County. Any such permit so issued may be extended pursuant to the terms of (e), above.
- (j) Without minimizing competition and without favoring local companies, the County Mayor or designee may, but is not required to, pursue concessions that reflect the diverse, cosmopolitan blend of people's and cultures that make up Miami-Dade County, such that Miami International Airport reflects to the traveling public the unique character of Miami-Dade County.
- (k) May impose terms and conditions of the Local Preference Ordinance, Section 2-8.5 of the Code of Miami-Dade County, on concession contracts.
- (l) Enter into negotiations for award of a contract with one or more concessionaires, if such contract will be non-exclusive. The County Mayor or designee is not authorized to negotiate exclusive concession contracts with a single concessionaire.
- (m) Where necessary due to changing customer needs or consumer demand, authorize existing concessionaires to alter or modify concession concepts.
- (4) All powers granted to the County Mayor or designee pursuant to 2-286.2(3) are subject to ratification by the Board of County Commissioners. All change orders, settlements, modifications, adjustments, or extensions granted pursuant to any authority herein shall specify that the action is revocable if not ratified by the Board of County Commissioners. Additionally, the County Mayor or designee shall provide notice to the Chair of the Board of County Commissioners when the County Mayor or designee exercises any power granted in this section; however, failure to provide such notice shall not affect the validity of such action.

(5) With respect to any contracts for capital improvements, other construction, or for professional services, the County Mayor or designee is authorized to:

(a) Present, as part of the Aviation Department's yearly budget submittal, a work program specifying projected capital needs over the five years. This work program shall be broken down by category into North Terminal projects, Central Terminal projects, South Terminal Projects, Airfield Projects, Roadway Projects, General Aviation Projects, and Non-Terminal Projects.

(b) The work program shall specify the reason each capital project is needed, the projected cost of such project inclusive of both construction and design/engineering costs, shall specify all grants which may be available to fund such project, shall specify the impact of such project on potential revenues, and shall specify all impacts to airport operations and the community which may result during the construction of such project. The work program shall also list all previously approved projects currently ongoing.

(c) The Board of County Commissioners shall approve or disapprove projects submitted. For each project submitted that is approved, the Board of County Commissioners shall allocate a maximum project amount, inclusive of design or engineering costs. All approved capital projects shall be listed on the approved work plan under the appropriate category as delineated in 2-286.2(5)(a). For each such category, the aggregate of the approved projects in the category, plus a ten percent contingency fee, shall reflect the budget cap for each category of approved capital projects.

(d) With respect to any capital project approved by the Board of County Commissioners, the County Mayor or designee may:

(i) Draft, Issue, or Advertise Invitations to Bid, Requests for Proposals, Requests for Qualifications or any other competitive procurement document seeking construction of the project, seeking materials to be incorporated into the project, or design, engineering, or construction management services. The Aviation Department is authorized to utilize fixed cost, unit price, design-build, construction manager at risk, or any other manner of construction contract authorized by law.

(ii) May reject or award all bids, proposals, or other documents received in connection with any competitive procurement. However, in the event that any award of any such contract is protested, the Board of County Commissioners shall award such

contract. The County Mayor or Designee may not waive competitive bids in the award of a contract without the approval of the Board of County Commissioners.

(iii) May extend the time for completion of any contract for construction, materials, or professional services.

(iv) May negotiate and settle claims, via issuance of a change order or settlement agreement.

(v) May negotiate and execute change orders altering the terms of any contract, as may be necessary to more efficiently accomplish completion of the work or to enhance the value of the project.

(vi) Re-allocate unspent monies within the approved work-plan categories.

(vii) Apply for, execute, and receive any federal or state grant in connection with any project, and execute any ancillary documents required to effectuate such grant.

(viii) Apply for, execute, and enter into joint participation agreements with any local, state, or federal government entity for the completion of a project, so long as the County's financial commitment pursuant to any such agreement is less than the value assigned to the project in the approved work plan.

(ix) Impose a DBE goal or measure on any construction project.

(x) May advertise and award contracts for professional services, consistent with the requirements of 2-286.2(5)(e). With respect to any contract so awarded, the County Mayor or Mayor's designee may exercise any power granted in 2-286(5)(d)(i)-(viii).

(e) May issue and evaluate Requests for Qualifications for Professional Services, if the RFQ and evaluation process is otherwise consistent with Section 2-10.4 of the Code of Miami-Dade County; the County Mayor or designee is authorized to take any act with respect to such RFQ as is delegated to the County Manager in Section 2-10.4. The County Mayor or designee is authorized appoint a negotiation committee to enter into negotiations with the firm deemed most qualified, and to award a contract to such firm. In the event that the County Mayor or designee is unable to negotiate a contract with the most qualified firm, the County Mayor or designee is authorized to negotiate, sequentially, with

the remaining firms in order of qualifications; alternately, the County Mayor or designee may at any time reject all qualifications received. Except as noted herein, nothing contained in this Section shall otherwise modify the substantive or procedural requirements of Section 2-10.4 of the Code of Miami-Dade County.

(f) With respect to non-capital construction, the County Mayor or designee may utilize all powers specified in Sections 2-286.2(5)(d)(i)-(v) and (vii).

(g) The authority granted in 2-286.2(5)(d), (e), and (f) is subject to the following limitations:

(i) No individual action taken pursuant to 2-286.2(5)(d)(iii)-(v), 2-286.2(5)(e), or 2-286.2(5)(f) may result in an increase in the value of the contract in excess of \$10,000,000.00 or 15 %, whichever is less, without prior action of the Board of County Commissioners; however these caps shall not apply where the action is necessary to avert an immediate hazard to human health or the environment.

(ii) At no point may any action taken result in total project costs for each approved work plan category exceeding the total amount approved by the Board of County Commissioners, inclusive of contingency.

(iii) All actions are subject to ratification by the Board of County Commissioners. All change orders, settlements, modifications, adjustments, or extensions granted pursuant to any authority herein shall specify that the action is revocable if not ratified by the Board of County Commissioners, and shall include a sufficient release such that, in the event that the Board of County Commissioners does not ratify such item, the contractor is not entitled to lost profits or other indirect costs.

(iv) All actions taken which increase a contract amount must be reviewed and approved by the Director of Small Business Development.

(v) The County Mayor or designee shall provide notice to the Chair of the Board of County Commissioners when the County Mayor or designee exercises any power granted in this section; however, failure to provide such notice shall not affect the validity of such action.

(6) The County Mayor or designee may enter into, execute, and enforce standard form leases with non-governmental tenants of five years or less in duration, and may enter into standard or non-standard leases with governmental tenants of ten years or less in duration, without approval of the Board of County Commissioners, provided each lease provides a right for early termination and provides for application of annual rent at amounts as may be determined by the Board of County Commissioners, such amounts not to be less than the market rent for such class of property. The County Mayor or designee shall not be required to utilize any competitive procurement in connection with any lease of space on property owned by the Miami-Dade Aviation Department, irrespective of whether such lease is for purely aviation purposes or for aviation support purposes.

(7) For any leases, approve re-imbursement of tenant funded construction on such tenant's leasehold, if such construction is competitively procured, bonded, includes small business or, as may be authorized under federal law, minority goals and measures, and is authorized in writing by the County Mayor or designee prior to commencement of the work. Alternately, the County may apply a rental credit to any tenant self-funding such construction; in such case, the tenant may procure construction without competitive process, and is under no obligation to include goals and measures. Title to all tenant construction projects shall vest in the County upon issuance of a certificate of occupancy.

(8) With respect to any lease, whether directly awarded, negotiated, or procured through competitive process, any oral communications between Aviation department staff and any prospective aviation lessee shall not be deemed a violation of the Cone of Silence; however, notwithstanding the preceding, nothing herein shall authorize any conversations between Aviation Department Staff and any prospective lessee prior to evaluations of bids or proposals, to the extent competitive procurement is utilized to select a lessee, but in such case Aviation Department staff may communicate with a prospective lessee during negotiations of lease terms.

(9) Airport procurement is exempted from the requirements of Administrative Orders 3-38 and 3-39. Notwithstanding the preceding, the County Mayor or designee, in his discretion, may make use of the provisions or programs of these Administrative Orders where it is in the best interests of Miami International Airport. The Board of County Commissioners may, but is not required to, promulgate Implementing Orders further specifying how authority granted under this Ordinance may be used.

(10) Notwithstanding any other provision of this Ordinance to the contrary, and solely with respect to Contracts currently awarded for work related to the completion of the North Terminal, specifically including but not limited to construction and design work related to the baggage system, the Federal

Inspection Services area, and work related to removal of the temporary baggage the County Mayor or designee may:

(a) Take any action otherwise authorized by Section 5(d)(ii)-(vii) herein, without regard to the dollar value of any change order or settlement.

(b) The County Mayor or designee's authority under this subsection is constrained by the currently authorized budget for the North Terminal. The County Mayor or designee may not take any action otherwise authorized if the effect of such action would be to cause the aggregate value of all contracts related to North Terminal to exceed this budgeted amount.

(c) All actions taken under this subsection are subject to ratification by the Board of County Commissioners. All change orders, settlements, modifications, adjustments, or extensions granted pursuant to any authority herein shall specify that the action is revocable if not ratified by the Board of County Commissioners, and shall include a sufficient release such that, in the event that the Board of County Commissioners does not ratify such item, the contractor is not entitled to lost profits or other indirect costs.

(11) The provisions of this Ordinance shall apply to all General Aviation Airports.

(12) The Board of County Commissioners may suspend the operation of this Ordinance, in whole or in part, by resolution, if such resolution is approved by two thirds of then serving Board of County Commissioners.<<

Section 3. If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

Section 4. It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance, including any sunset provision, shall become and be made a part of the Code of Miami-Dade County, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

18

Section 5. This ordinance shall become effective ten (10) days after the date of enactment unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

Section 6. While effective, this ordinance shall supersede any term or provision of Ordinances 2-285 and 2-286.1 that is inconsistent with the terms of those ordinances.

Section 7. Resolution Nos. 1586-72 and 1587-72 are repealed and are no longer of any force and effect.

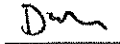
Section 8. This ordinance shall sunset upon a change in the Director of the Miami-Dade County Aviation Department.

PASSED AND ADOPTED:

Approved by County Attorney as
to form and legal sufficiency:



Prepared by:



David M. Murray

Prime Sponsor: Commissioner Bruno A. Barreiro